Remarks

The Final Office Action mailed 23 December 2003 has been received and reviewed. The pending claims remain 21-48 and 50-70. Reconsideration and withdrawal of the rejections are respectfully requested.

The 35 U.S.C. §102 Rejection

Claims 21-31, 33-35, 37, 39, 40, 42-48, 50-53, and 55

The Examiner maintained the rejection of claims 21-31, 33-35, 37, 39, 40, 42-48, 50-53, and 55 under 35 U.S.C. §102(b) as being anticipated by Thomas (U.S. Patent No. 5,586,371).

Applicants respectfully traverse this rejection for reasons presented previously, which are incorporated herein by reference in their entirety. For the convenience of the Examiner, Applicant's arguments regarding this rejection as presented in the most recent response are repeated below, followed by further analyses of the Examiner's "Response to Arguments" as presented in the present Office Action.

Previous Arguments:

Applicants submit that claims 21-31, 33-35, 37, 39-40, 42-53 and 55 are not anticipated by Thomas because Thomas does not teach each and every element of the rejected claims. For a claim to be anticipated under 35 U.S.C. § 102(b), each and every element of the claim must be found in a single prior art reference. See M.P.E.P. § 2131.

Each of the independent claims of the present invention (i.e., claims 21, 40, and 48) recites a plurality of discrete polymeric regions fused to a first major side of the web. A plurality of stems extends from each discrete polymeric region of the plurality of polymeric regions.

In contrast to claims 21, 40, and 48, The Office Actions have identified, within the disclosure of Thomas, an array of loops 22 attached to a substrate 24. Each individual loop is

attached to the substrate 24 by a base 26. In other words, the identified portions of Thomas show that each "discrete polymeric region" provides only a single loop.

Nonetheless, the Office Action asserts that a row of components in Thomas equates to a "discrete polymeric portion." Even if, for the sake of argument, one were to consider a row of adjacent loop components the equivalent of the claimed discrete polymeric regions, the loop components form only loops, not stems. That is, each loop is "severed from the distal end 30" (see Figure 1) where it then engages the adjacent loop while molten and forms the "solid loop structure 22" identified in the Office Action (see col. 5, line 59 - col. 6, line 8). Thus, there are no "stems" at all in the loop structure 22.

Moreover, although not asserted specifically by the Office Action, Applicants further submit that the hook structures 44 also fail to anticipate claims 21, 40, 48, and claims dependent therefrom. For example, Figures 1 and 2 clearly shown a demarcation line between each base of adjacent hook structures 44. If the structures 44 were to form a singular structure as would be required to support anticipation, the bases would flow together and no line delineating the individual bases between adjacent structures 44 would be visible.

Further, Applicants reiterate the traversal of the assertion that Thomas teaches polymeric regions that are "fused" to a substrate to a degree that supports an anticipation rejection. Thomas does not explicitly teach that the polymeric materials are "fused" to the substrate, but rather teaches only that the bases of the loops or hooks are "deposited" on the substrate. As such, the assertion is based on inherency, i.e., that Thomas inherently teaches fused polymeric regions. The standard for inherency with respect to anticipation, however, requires that the asserted result (i.e., fused polymeric regions) must necessarily result from the process disclosed in Thomas. Applicants respectfully submit that the burden of establishing inherency has not been met in the present rejection.

Claims 22-31, 33-35, 37, 39, 42-47, 50-53, and 55, which depend from one of independent claims 21, 40, and 48, are not anticipated by Thomas for the same reasons as presented above for claims 21, 40, and 48. In addition, such dependent claims each recite

additional elements that further support patentability when combined with their respective independent claims.

Analyses of "Examiner's Response to Arguments":

In support of this rejection, it was asserted that Thomas teaches a plurality of "discrete arrays (polymeric regions)" that are "deposited in a liquid state and pressed to a substrate 24 by a backing roll 62, i.e., fused to the substrate . . . ." Office Action, p. 5 (December 23, 2003) (emphasis in original). It was further asserted that Thomas teaches fusing a polymeric material to a substrate because "Thomas also deposits a polymeric material on a substrate 24 in a **liquid** (molten) state and presses into cavities by a roll 62 (See Fig. 5; column 5, lines 36-58)." Office Action, p. 5 (December 23, 2003) (emphasis in original). Applicants respectfully disagree.

The actual transfer of polymer as taught by Thomas is described as "... a manufacturing process which is similar to a process commonly known as rotary screen printing...." Thomas, col. 5, lines 29-31. The backing roll 62 does not press the polymer to the substrate as asserted in the Office Action. Rather, the backing roll 62 holds the substrate against the print cylinder 60 while polymer is extruded through apertures 56 in the print cylinder 60 onto the surface of the substrate 24. The following excerpt from Thomas describes transfer of the polymer to the substrate in more detail:

> The second roll, referred to as the backing roll 62, provides the reaction against the print cylinder 60 to position the substrate 24 against the print cylinder 60 as the substrate 24 passes through the nip 58. Liquid, thermally sensitive material, preferably thermoplastic material, from which the loops 22 are eventually formed is supplied from a heated source, such as a heated pressure bar 72. The thermally sensitive material is forced into the apertures 56 by a doctor blade 74 as the print cylinder 60 is rotated about its centerline. The thermally sensitive material is then extruded from the apertures 56 onto the substrate 24 in the desired pattern.
> Thomas, col. 5, lines 48-58.

In other words, Thomas does not teach (or suggest) that the backing roll 62 press the polymer to the substrate 24 as asserted in support of this rejection and such assertions cannot be used to support this anticipation rejection.

Another assertion presented in support of this rejection relates to the differentiation between "shanks" and "stems." It is asserted in the Office Action that Thomas teaches that "... **shanks** are **stems** (See column 4, line 53). . . ." Office Action, p. 5 (December 23, 2003) (emphasis in original). A close review of the cited passage reveals that Thomas actually equates shanks and stems only with respect to the formation of hooks, not loops. Furthermore, the hook structures disclosed by Thomas are limited to one hook per base as discussed in the arguments previously presented with respect to this issue. In other words, the Examiner's assertions mix and match various features of the hook and loop structures in combinations that are not taught by Thomas.

As a result, those proposed constructions are not disclosed by Thomas and cannot form a basis for an anticipation rejection.

For at least the above reasons, Applicants submit that claims 21-31, 33-35, 37, 39-40, 42-48, 50-53, and 55 are not anticipated by Thomas. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

Claims 21-26, 28-31, 33, 39, 40, 42-48, 50-53, 55, and 57

The Examiner maintained the rejection of claims 21-26, 28-31, 33, 39, 40, 42-48, 50-53, 55, and 57 under 35 U.S.C. §102(b) as being anticipated by Wessels et al. (U.S. Patent No. 5,669,120).

Applicants respectfully traverse this rejection for reasons presented previously, which are incorporated herein by reference in their entirety. For the convenience of the Examiner, Applicant's arguments regarding this rejection as presented in the most recent response are

repeated below, followed by additional arguments and further analyses of the Examiner's "Response to Arguments" as presented in the final Office Action.

Applicants submit that claims 21-26, 28-31, 33, 39, 40, 42-48, 50-53, and 55 are not anticipated by Wessels et al. because Wessels et al. does not teach each and every element of the rejected claims.

Previous Arguments:

Each of the independent claims subject to this rejection (i.e., claims 21, 40, and 48) recites a plurality of discrete polymeric regions fused *to* a first major side of the web. A plurality of stems extends from each discrete polymeric region of the plurality of polymeric regions. Figure 1 of Applicants' specification clearly illustrates one example of the claimed configuration.

In contrast to claims 21, 40, and 48, Wessels et al. discloses a molded surface fastener wherein a synthetic resin (that forms hook elements) *encapsulates* the substrate (see, e.g., Figure 4A-4F). In fact, Wessels et al. makes clear that the woven or knit cloth to be used "must have adequate pores for the passage of molten resin." (Col. 3, lines 36-37). Thus, when manufactured, the molten resin passes through the pores of the woven or knit cloth "to embed the foundation structure of the pile woven or knit cloth in the molten resin." (Col. 4, lines 14-20, emphasis added).

Thus, the resin that forms the hooks in Wessels et al. does so by encapsulating, i.e., flowing through, its base substrate rather that fusing to a first major side as recited by the claims. As a result, Wessels et al. cannot anticipate claims 21, 40, and 48.

Claims 22-26, 28-31, 33, 39, 42-47, 50-53, and 55, which depend from one of independent claims 21, 40, and 48, are not anticipated by Wessels et al. for the same reasons as presented above for claims 21, 40, and 48. In addition, such dependent claims each recite additional elements that further support patentability when combined with their respective independent claims.

Additional Arguments:

A number of the claims subject to this anticipation rejection in view of Wessels et al. recite an elastic web. The Office Actions do not, however, identify where Wessels et al. teach the use of an elastic web.

With respect to claim 23, Applicants note that the Office Action fails to identify where or how Wessels et al. teach or disclose the use of elastic substrates as explicitly recited in claim 23 ("the web comprises an elastic web"). For at least this reason, Applicants respectfully submit that Wessels et al. cannot form the basis for an anticipation rejection of claim 23.

The same argument presented with respect to claim 23 also applies to claims 42-48, 50-53 and 55, all of which are subject to this rejection over Wessels et al. Claims 42-47 all depend from claim 40 which recites "an elastic web" and claims 50-53 and 55 all depend from claim 48 which also recites "an elastic web." Because Wessels et al. does not teach or disclose the use of elastic substrates, the anticipation rejection of claims 42-48, 50-53 and 55 cannot be sustained.

Analyses of Examiner's "Response to Arguments":

In support of the anticipation rejection based on Wessels et al., it is asserted that "the 'encapsulation' in Wessels achieves polymeric regions fused to a first major side of the web." Office Action, p.6 (December 23, 2003) (emphasis in original). Applicants respectfully disagree.

The definition of "fused" as used by the Examiner to support a finding that polymeric regions that encapsulate a substrate are equivalent to "polymeric regions fused to a first major side" of a substrate is unduly broad. The claims should be interpreted by giving the words used in the claims "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification." MPEP § 2111, p. 2100-47 (8th Ed., Rev. 1, Feb. 2003) (citing *In re Morris*, 44 USPQ2d 1023 (Fed. Cir. 1987)). In addition, "[t]he broadest reasonable

interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *Id.*

Applicants respectfully submit that the meaning of "fused to a first major side of the web" as recited in each of the independent claims subject to this rejection cannot be reasonably broadened to include encapsulation of the entire web as asserted. For example, nowhere does the specification hint that encapsulation of the entire web is contemplated as being equivalent to fusing the polymeric regions to a surface of the web. In fact, the specification explicitly recites that although polymeric regions are located on one major surface of the web, some embodiments may include polymeric regions fused to both major surfaces of the web. *See, e.g.*, Specification, p. 4, lines 26-29. In addition, the figures provided to illustrate exemplary embodiments of the invention all depict polymeric regions fused to a surface of the web, not encapsulating the entire thickness of the web.

In view of the above, Applicants submit that attempts to broaden the meaning of "fused to a major surface of the web" to include encapsulation of a web as taught by Wessels et al. is not consistent with the interpretation that would be reached by skilled in the art. As a result, that interpretation cannot be relied on to support the anticipation rejection based on Wessels et al.

If this proposed interpretation of "fused to a major surface of the web" is to continue to be relied upon in support of the rejection, Applicants respectfully request that the Examiner provide some reasoning as to how or why, in view of the teachings in the specification and figures identified above, one skilled in the art could reach the proposed interpretation. Doing so would allow applicants the opportunity to address such reasoning in future prosecution of the present application.

For at least the above reasons, Applicants submit that claims 21-26, 28-31, 33, 39, 40, 42-48, 50-53, and 55 are not anticipated by Wessels et al. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

The 35 U.S.C. §103 Rejections

The Examiner maintained the rejection of claims 32, 41, and 54 under 35 U.S.C. §103(a) as being unpatentable over Thomas (U.S. Patent No. 5,586,371) in view of Murasaki (U.S. Patent No. 5,643,651).

The Examiner maintained the rejection of claim 36 under 35 U.S.C. §103(a) as being unpatentable over Thomas (U.S. Patent No. 5,586,371).

The Examiner maintained the rejection of claim 38 under 35 U.S.C. §103(a) as being unpatentable over Thomas (U.S. Patent No. 5,586,371) in view of Shephard et al. (U.S. 6,205,623).

The Examiner maintained the rejection of claims 32, 41, and 54 under 35 U.S.C. §103(a) as being unpatentable over Wessels et al. (U.S. Patent No. 5,669,120) and further in view of Murasaki (U.S. Patent No. 5,643,651).

The Examiner maintained the rejection of claims 34-37 under 35 U.S.C. §103(a) as being unpatentable over Wessels (U.S. Patent No. 5,669,120).

The Examiner maintained the rejection of claims 40, 42-48, 50-53, 55, 56, and 58-70 under 35 U.S.C. §103(a) as being unpatentable over Wessels (U.S. Patent No. 5,669,120) in view of Allen et al. (U.S. Patent No. 5,547,531).

Applicants respectfully traverse each of the above rejections for reasons presented previously, which are incorporated herein by reference in their entirety. For the convenience of the Examiner, Applicant's arguments regarding these rejections as presented in the most recent response are repeated below, followed by additional arguments (where applicable), and further analyses of the Examiner's "Response to Arguments" as presented in the final Office Action (where applicable).

Claims 32, 41, and 54

Claims 32, 41, and 54 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Thomas in view of Murasaki (U.S. Patent No. 5,643,651). Applicants traverse this rejection and submit that claims 32, 41, and 54 are not *prima facie* obvious for at least the following reasons.

Previous Arguments:

Applicants submit that claims 32, 41, and 54 are not *prima facie* obvious in view of the cited combination of documents. As stated above in regard to the 35 U.S.C. § 102(b) rejection of claims 21, 40, and 48 (from which claims 32, 41, and 54 depend), Thomas does not teach every element of claims 21, 40, and 48 (e.g., a plurality of stems extending from each discrete polymeric region, polymeric regions fused to a first major side of the web, and fusing of the polymeric material to the web). There is nothing identified in Murasaki that remedies these deficiencies.

Further, this rejection does not identify how one of ordinary skill in the art would modify the teachings of Thomas with those of Murasaki to reach the claimed invention. The Office Action equates the loops of Thomas with stems and then combines the actual hook or stem fasteners of Murasaki to reach the claimed invention. First, Applicants disagree that the loops of Thomas are equivalent to "stems" as recited in the present invention. Second, Applicants disagree with the assertion that one of ordinary skill in the art would consider modifying the loops of Thomas to obtain "loops" oriented in different directions as asserted in the Office Action. No discussion is provided as to how one of ordinary skill in the art could accomplish this goal, or whether there would be any reasonable likelihood of success in obtaining loops oriented in different directions. As a result, Applicants respectfully submit that a proper *prima facie* case of obviousness has not been presented.

Analyses of Examiner's "Response to Arguments"

In support of this rejection, it is asserted that "[t]he Office Action does not equate the loops of Thomas with stems. Each loop or hook in Thomas has a base portion, a stem portion and upper portion." This assertion is not, however accompanied by identification of where or how Thomas discloses that each loop includes "a base portion, a stem portion and upper portion." Thomas itself does not describe the loops as having stems. Rather, the term "stem" is used by Thomas in connection with hooks, not loops. Loops do not have stems because they are simply loops. Attempts to mix the teachings of Thomas with respect to hooks and loops are not supported by the reference itself and cannot be used to form the basis for a proper *prima facie* case of obviousness.

For at least these reasons, Applicants submit that claims 32, 41, and 54 are not *prima facie* obvious in view of the cited references. Reconsideration and withdrawal of the rejections are, therefore, respectfully requested.

Claim 36

Claim 36 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over Thomas. Applicants traverse this rejection and submit that claim 36 is not *prima facie* obvious for at least the following reasons.

As stated above with regard to the 35 U.S.C. § 102(b) rejection of claim 21 (from which claim 36 depends), Thomas does not teach, or even suggest, every element of claims 21 (e.g., a plurality of stems extending from each discrete polymeric region or polymeric regions fused to a first major side of the web, fusing of the polymeric material to the web).

Further, claim 36 recites additional elements that further support patentability when combined with claim 21.

For at least these reasons, Applicants submit that claim 36 is not *prima facie* obvious in view of Thomas. Reconsideration and withdrawal of the rejection are, therefore, respectfully requested.

Claim 38

Claim 38 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Thomas in view of Shephard et al. (U.S. Patent No. 6,205,623). Applicants traverse this rejection and submit that claim 38 is not *prima facie* obvious.

Previous Arguments:

The combination of Thomas and Shepard et al. does not teach every element of claim 38, thereby precluding a finding of *prima facie* obviousness.

Claim 38, which depends from claim 21, includes all of the elements of claim 21. As stated above with regard to the 35 U.S.C. § 102 rejection of claim 21, Thomas does not teach, or even suggest, each and every element of claim 21. The addition of Shepard et al. does nothing to cure the deficiencies of Thomas. For this reason alone, Applicants respectfully submit that a *prima facie* case of obviousness has not been established.

In addition, Applicants respectfully submit that even if, for the sake of argument, a mushroom fastener is equivalent to a hook for fastening purposes, a *prima facie* case of obviousness would require some reasonable expectation of success for the asserted modification. Given that the teachings of Thomas are entirely directed at the manufacture of hooks or loops by severing strands of polymer under tension such that the severed strands recoil to form loops, Applicants submit that a proper *prima facie* case of obviousness requires some discussion as to how one would modify the teachings of Thomas to provide mushroom shaped fasteners as

recited in claim 38. There is no such discussion and, as a result, a *prima facie* case of obviousness has not been established.

Analyses of Examiner's "Response to Arguments"

In addition to the arguments presented above, Applicants note further that Shephard et al. does not teach or suggest the formation of a "mushroom head" on a loop. Such actions are limited to stems or hooks, not loops. Any assertion that Shephard et al. teaches or suggests the formation of a mushroom head on the loops of Thomas are, therefore, not supported by the cited references and cannot be relied upon as the basis for *prima facie* obviousness.

For at least the above reasons, Applicants submit that claim 38 is not *prima facie* obvious in view of the cited references. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

Claims 32, 41, and 54

Claims 32, 41, and 54 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Wessels et al. in view of Murasaki (U.S. Patent No. 5,643,651). Applicants traverse and submit that claims 32, 41, and 54 are not *prima facie* obvious in view of the cited combination of documents.

Previous Arguments:

As stated above with regard to the 35 U.S.C. § 102(b) rejection of claims 21, 40, and 48 (from which claims 32, 41, and 54 respectively depend), Wessels et al. does not teach, or even suggest, each and every element of claims 21, 40, and 48 (e.g., polymeric regions fused to a first major side of the web). There is nothing identified in Murasaki that remedies this deficiency.

Further, these dependent claims recite additional elements that further support patentability when combined with their respective base claims.

Additional Arguments:

Claims 41 and 54 subject to this obviousness rejection depend from independent claims (40 and 48, respectively) that recite an elastic web. The Office Actions do not, however, identify where Wessels et al. or Murasaki teach or suggest the use of an elastic web. Nor has any motivation or suggestion to modify the references to reach the invention of claims 41 and 54 been identified.

For at least this reason, Applicants respectfully submit that a proper *prima facie* case of obviousness has been established for claims 41 and 54 in view of Wessels et al. and Murasaki.

Analyses of Examiner's "Response to Arguments":

In support of the rejection based on Wessels et al., it is asserted that "the 'encapsulation' in Wessels achieves polymeric regions fused to a first major side of the web." Office Action, p.6 (December 23, 2003) (emphasis in original). Applicants respectfully disagree.

The definition of "fused" as used by the Examiner to support a finding that polymeric regions that encapsulate a substrate are equivalent to "polymeric regions fused to a first major side" of a substrate is unduly broad. The claims should be interpreted by giving the words used in the claims "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification." MPEP § 2111, p. 2100-47 (8th Ed., Rev. 1, Feb. 2003) (citing *In re Morris*, 44 USPQ2d 1023 (Fed. Cir. 1987)). In addition, "[t]he broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *Id.*

Applicants respectfully submit that the meaning of "fused to a first major side of the web" as recited in each of the independent claims subject to this rejection cannot be reasonably broadened to include encapsulation of the entire web as asserted. For example, nowhere does the specification hint that encapsulation of the entire web is contemplated as being equivalent to fusing the polymeric regions to a surface of the web. In fact, the specification explicitly recites that although polymeric regions are located on one major surface of the web, some embodiments may include polymeric regions fused to both major surfaces of the web. *See, e.g.,* Specification, p. 4, lines 26-29. In addition, the figures provided to illustrate exemplary embodiments of the invention all depict polymeric regions fused to a surface of the web, not encapsulating the entire thickness of the web.

In view of the above, Applicants submit that attempts to broaden the meaning of "fused to a major surface of the web" to include encapsulation of a web as taught by Wessels et al. is not consistent with the interpretation that would be reached by skilled in the art. As a result, that interpretation cannot be relied on to support the rejection based on Wessels et al.

If this proposed interpretation of "fused to a major surface of the web" is to continue to be relied upon in support of the rejection, Applicants respectfully request that the Examiner provide some reasoning as to how or why, in view of the teachings in the specification and figures identified above, one skilled in the art could reach the proposed interpretation. Doing so would allow applicants the opportunity to address such reasoning in future prosecution of the present application.

For at least these reasons, Applicants submit that claim 32, 41, and 54 are not *prima facie* obvious over Wessels et al. in view of Murasaki. Reconsideration and withdrawal of the rejection are, therefore, respectfully requested.

Claims 34-37

Claims 34-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wessels et al. Applicants traverse and submit that claims 32, 41, and 54 are not *prima facie* obvious in view of this document.

Previous Arguments:

As stated above with regard to the 35 U.S.C. § 102(b) rejection of claim 21 (from which claims 34-37 depend), Wessels et al. does not teach, or even suggest, each and every element of claims 21, 40, and 48 (e.g., polymeric regions fused to a first major side of the web). Moreover, Applicants submit that dependent claims 34-37 recite additional elements that further support patentability when combined with their respective base claim.

Analyses of Examiner's "Response to Arguments":

In support of the rejections based on Wessels et al., it is asserted that "the 'encapsulation' in Wessels achieves polymeric regions fused to a first major side of the web." Office Action, p.6 (December 23, 2003) (emphasis in original). Applicants respectfully disagree.

The definition of "fused" as used by the Examiner to support a finding that polymeric regions that encapsulate a substrate are equivalent to "polymeric regions fused to a first major side" of a substrate is unduly broad. The claims should be interpreted by giving the words used in the claims 'the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification." MPEP § 2111, p. 2100-47 (8th Ed., Rev. 1, Feb. 2003) (citing *In re Morris*, 44 USPQ2d 1023 (Fed. Cir. 1987)). In addition, "[t]he broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *Id.*

Applicants respectfully submit that the meaning of "fused to a first major side of the web" as recited in each of the independent claims subject to this rejection cannot be reasonably broadened to include encapsulation of the entire web as asserted. For example, nowhere does the specification hint that encapsulation of the entire web is contemplated as being equivalent to fusing the polymeric regions to a surface of the web. In fact, the specification explicitly recites that although polymeric regions are located on one major surface of the web, some embodiments may include polymeric regions fused to both major surfaces of the web. *See, e.g.,* Specification, p. 4, lines 26-29. In addition, the figures provided to illustrate exemplary embodiments of the invention all depict polymeric regions fused to a surface of the web, not encapsulating the entire thickness of the web.

In view of the above, Applicants submit that attempts to broaden the meaning of "fused to a major surface of the web" to include encapsulation of a web as taught by Wessels et al. is not consistent with the interpretation that would be reached by skilled in the art. As a result, that interpretation cannot be relied on to support a rejection based on Wessels et al.

If this proposed interpretation of "fused to a major surface of the web" is to continue to be relied upon in support of the rejection, Applicants respectfully request that the Examiner provide some reasoning as to how or why, in view of the teachings in the specification and figures identified above, one skilled in the art could reach the proposed interpretation. Doing so would allow applicants the opportunity to address such reasoning in future prosecution of the present application.

For at least these reasons, Applicants submit that claim 34-37 are not *prima facie* obvious over Wessels et al. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 40, 42-48, 50-53, 55, 56, and 58-70

Claims 40, 42-48, 50-53, 55, 56, and 58-70 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Wessels et al. in view of Allen et al. (U.S. Patent No. 5,547,531).

Applicants traverse and submit that claims 40, 42-48, 50-53, 55, 56, and 58-70 are not *prima facie* obvious in view of the cited combination of documents.

Previous Arguments:

As stated above with regard to the 35 U.S.C. § 102(b) rejection of claims 40 and 48 (from which claims 42-48, 50-53, and 55 depend), Wessels et al. does not teach, or even suggest, each and every element of claims 40 and 48 (e.g., polymeric regions fused to a first major side of the web). There is nothing identified in Allen et al. that remedies this deficiency. Rather, Allen et al. is relied upon only to teach a nonwoven web of fibrous material attached to an elastic backing.

Moreover, with respect to independent claim 56, from which claims 58-70 depend, Applicants submit that Wessels et al. in view of Allen et al. fails to teach or suggest each and every element of the claim. For example, claim 56, like claims 40 and 48, recites a mechanical fastener having a nonwoven web with at least one discrete polymeric region fused to a first major side of the nonwoven web. For the same reasons as claims 40 and 48, Wessels et al. in view of Allen et al. fails to teach this element. Moreover, claim 56 also recites that the polymer of the at least one discrete polymeric region is entangled with a fibrous surface of the nonwoven web. The Office Action has not identified such a teaching in either Wessels et al. or Allen et al.

It is further submitted that the Office Action has failed to identify any motivation to combine the teachings of Wessels et al. with those of Allen et al. For example, a stated objective of Wessels et al. is "to provide a high-quality surface fastener, on which molded hook elements and loop elements made of fibers are mixedly distributed." Col. 2, lines 55-57. Yet, there is no motivation identified, nor is there any explanation of how, to intermix male and female components on the elastic backing of Allen et al.

Applicants thus submit that claims 40, 48, and 56 are allowable over Wessels et al. in view of Allen et al. Moreover, dependent claims 42-47, 50-53, 55, and 58-70 recite additional elements that further support patentability when combined with their respective base claims.

Analyses of Examiner's "Response to Arguments":

In support of the rejections based on Wessels et al., it is asserted that "the 'encapsulation' in Wessels achieves polymeric regions fused to a first major side of the web." Office Action, p.6 (December 23, 2003) (emphasis in original). Applicants respectfully disagree.

The definition of "fused" as used by the Examiner to support a finding that polymeric regions that encapsulate a substrate are equivalent to "polymeric regions fused to a first major side" of a substrate is unduly broad. The claims should be interpreted by giving the words used in the claims "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification." MPEP § 2111, p. 2100-47 (8th Ed., Rev. 1, Feb. 2003) (citing *In re Morris*, 44 USPQ2d 1023 (Fed. Cir. 1987)). In addition, "[t]he broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *Id.*

Applicants respectfully submit that the meaning of "fused to a first major side of the web" as recited in each of the independent claims subject to this rejection cannot be reasonably broadened to include encapsulation of the entire web as asserted. For example, nowhere does the specification hint that encapsulation of the entire web is contemplated as being equivalent to fusing the polymeric regions to a surface of the web. In fact, the specification explicitly recites that although polymeric regions are located on one major surface of the web, some embodiments may include polymeric regions fused to both major surfaces of the web. *See, e.g.,* Specification, p. 4, lines 26-29. In addition, the figures provided to illustrate exemplary embodiments of the invention all depict polymeric regions fused to a surface of the web, not encapsulating the entire thickness of the web.

In view of the above, Applicants submit that attempts to broaden the meaning of "fused to a major surface of the web" to include encapsulation of a web as taught by Wessels et al. is not

consistent with the interpretation that would be reached by skilled in the art. As a result, that interpretation cannot be relied on to support a rejection based on Wessels et al.

If this proposed interpretation of "fused to a major surface of the web" is to continue to be relied upon in support of the rejection, Applicants respectfully request that the Examiner provide some reasoning as to how or why, in view of the teachings in the specification and figures identified above, one skilled in the art could reach the proposed interpretation. Doing so would allow applicants the opportunity to address such reasoning in future prosecution of the present application.

In addition, this rejection is based on the combination of Wessels et al. in view of Allen et al. in which the woven or knit web of Wessels et al. is replaced by the nonwoven fibrous web joined to an elastic backing as disclosed by Allen et al. The asserted combination does not, however, possess a reasonable expectation of success as required for a proper *prima facie* case of obviousness.

Wessels et al. describe in great detail the need for the polymeric material of the hooks to encapsulate the substrate. *See, e.g.*, Wessels et al., col. 3, line 1 to col. 4, line 67. In contrast, the elastomeric backings 34 of Allen et al. are generally described as films, with no specific need for openings that would allow encapsulation as discussed in connection with Wessels et al. As a result, Applicants respectfully submit that the asserted modification of Wessels et al. using the substrates of Allen et al. would not reasonably be expected to form a successful product.

Furthermore, given the relative timing of the two patents, it seems clear that the inventors of Wessels et al. knew of the existence of nonwoven webs and dismissed their use in connection with their invention. In fact, Wessels et al. explicitly recite that woven or knitted webs are the only ones considered for use in connection with the process, stating that "since the pile core sheet is manufactured by weaving or knitting . . ." Wessels et al., col. 10, lines 54-56. It is clear that Wessels et al. did not contemplate that other substrates could be used in connection with their invention and the rejection based on Wessels et al. in view of Allen et al. provides no substantive

reasoning as to why the proposed modifications would be attempted by one of ordinary skill in the art or successful if tried.

For at least the above reasons, Applicants submit that claims 40, 42-48, 50-53, 55, 56, and 58-70 are not *prima facie* obvious over Wessels et al. in view of Allen et al. Reconsideration and withdrawal of the rejection are, therefore, respectfully requested.

Summary

It is respectfully submitted that the pending claims 21-48 and 50-70 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for
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23 APRIL 2004
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CERTIFICATE UNDER 37 CFR §1.8:
The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Commissioner for Patents, **Mail Stop AF**, P.O. Box 1450, Alexandria, VA 22313-1450, on this 23rd day of April, 2004, at 1:30 PM (Central Time).

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